

Circuit Court for Baltimore County
Case No.: 3K16-2612

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1817

September Term, 2017

STEPHAN J. VAUGHN

v.

STATE OF MARYLAND

Woodward C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 3, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On September 12, 2017, appellant, Stephan J. Vaughn, was convicted by a jury sitting in the Circuit Court for Baltimore County of theft under \$1000.¹ The court sentenced him to eighteen months of incarceration. This timely appeal followed wherein he argues that the evidence was legally insufficient to sustain his conviction. We disagree.

BACKGROUND

In April of 2016, the Baltimore County Police Department was involved in an on-going investigation, and during that investigation, they obtained a court order to place a GPS tracking device on a 2013 Dodge Challenger registered to co-defendant Andre Faison. The GPS device provided real time tracking for the location of the device.

At around 4 a.m. on April 15, 2016, Corporal Christine Sisk, who was leading the investigation, discovered that the GPS tracking device installed on the Dodge had entered Baltimore County. As she monitored the GPS location from her own unmarked vehicle, she found that it travelled to the area of 6729 York Road, the location of the Austin Pharmacy. The tracking device then stopped, turned around, and left the area. Corporal Sisk relayed this information to other investigators, and to patrol vehicles who were dispatched to the area, (but who maintained their distance from the Dodge), while Coporal Sisk and other investigators monitored the travel of the GPS tracker. A few blocks away from the pharmacy, the tracker turned around and drove on York Road, back towards the pharmacy. At approximately 4:12 a.m. the tracker was stationary in the area of 6729 York

¹ The jury acquitted appellant of second degree burglary and malicious destruction.

Road for one minute and forty-one seconds. Police vehicles were nearby, but not within view of the pharmacy.

Dispatch then alerted Corporal Sisk that they had received a burglar alarm from Austin Pharmacy. In response Corporal Sisk dispatched the nearby patrol units to the pharmacy, just as the tracker indicated that it was moving away from the pharmacy on York Road. Patrol units continued to the pharmacy to confirm that a burglary did in fact occur. Corporal Jeff Williams responded to the pharmacy and discovered that the large tempered glass-paned door had been broken and pried open. Inside, all the drawers were open, and trash cans and chairs were found overturned. Missing was a cash drawer which housed currency in denominations of primarily ones and fives and rolled coins.

Corporal Sisk located the Dodge Challenger traveling down York Road and began to follow it in her unmarked vehicle. As she followed the Dodge she observed it turn eastward and pull into a shopping center located on Loch Raven Boulevard and stop in front of a Ruby Tuesday's restaurant. An individual then exited the Dodge, entered the restaurant, and came back out again. As the first individual had a conversation with a second individual at the Dodge, a marked police vehicle entered the shopping center. Both individuals quickly jumped back into the Dodge and the Dodge then exited the shopping center. Corporal Sisk was unable to follow the Dodge, as the Dodge was traveling at speeds close to 120 miles per hour. Corporal Sisk continued to monitor the GPS tracker and directed Detective Dominic Bridges to respond to the area and locate the Dodge.

Detective Bridges responded to the area in his unmarked police vehicle and found the Dodge traveling at a high rate of speed eastbound on Northern Parkway with its lights

off. He was eventually able to catch up to the vehicle when it pulled over on North Hill Road, a residential side street. Detective Bridges drove by the stopped Dodge and observed a group of individuals, including appellant, wearing dark clothing and standing next to the vehicle. He observed no other activity on the street. Detective Bridges continued down the road and parked a short distance away on an adjacent street. As soon as he stopped his vehicle he observed a silver BMW exit North Hill Drive. The BMW was later found to be registered to appellant's wife, Coretta Booker. The vehicle was occupied by three people, including appellant who was seated in the front passenger seat. Detective Bridges then ordered a marked patrol vehicle to conduct a stop of the BMW.

When the BMW stopped at a traffic light, police officers quickly came up on the vehicle, announced the traffic stop, and ordered the occupants out. Andre Faison, the original target of the investigation, was seated in the driver's seat of the BMW. Appellant was seated in the front passenger seat, and Dominic Dorkins was seated in the rear passenger seat. As appellant exited the vehicle, officers observed \$308 in U.S. currency on the top of the front passenger's seat where appellant had been seated. The money consisted of mostly fives, ones, and some rolled coins. Two cell phones were located in the center console, a prescription bottle was found on the floor, and a black knit cap and gloves were located elsewhere in the passenger compartment of the vehicle.

Back on North Hill Road, Corporal Sisk approached the Dodge and noted that its hood was very hot to the touch and smelled of brake dust. She testified that, in her experience, these observations indicated the vehicle had recently been traveling at a high rate of speed. The Dodge was towed to police headquarters and a warrant for its search

was obtained. A glove was found inside a door pocket, and another glove found on the floor. In the rear seat center console another set of gloves was discovered. A grey hooded sweatshirt and black knit mask were also found. During the course of the investigation, it was discovered that appellant’s wife, Coretta Booker, resided at 945 North Hill Road, near where Detective Bridges had observed the Dodge parked. It was also discovered that the GPS tracker installed on the Dodge had been to 945 North Hill Road approximately six times between April 8th and April 15th. A search warrant was obtained and executed for 945 North Hill Road. A duffel bag was located in front of a car parked across the street. Inside the duffel bag was a yellow pry bar with missing paint on the prying face.

Austin Pharmacy was equipped with multiple cameras, which captured footage of the burglary. One camera recorded pictures of a vehicle, which appeared to match co-defendant Faison’s Dodge, pulling up to the pharmacy. Two people are seen on the video entering the pharmacy. A person wearing a grey hooded sweatshirt and carrying a yellow crowbar with paint missing on the pry face, is seen on the surveillance video rummaging through items. Glove impressions were found by the entrance, but no latent prints. The timestamp on the video at the time of the burglary matched the time at which the GPS tracker placed the Dodge at that location.

DISCUSSION

Appellant argues that “the evidence was simply insufficient to demonstrate [his] agency.” We disagree.

To review for sufficiency of the evidence, “we review the evidence in the light most favorable to the prosecution and determine whether ‘any rational trier of fact could have

found the essential elements of the crime beyond a reasonable doubt.” *Perry v. State*, 229 Md. App. 687, 696 (2016) (quoting *State v. Smith*, 374 Md. 527, 533 (2003)). The reviewing court will affirm the conviction, “[i]f the evidence ‘either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.’” *Bible v. State*, 411 Md. 138, 156 (1998) (quoting *State v. Stanley*, 351 Md. 733, 750 (1998)). “[G]enerally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts.” *Neal v. State*, 191 Md. App. 297, 314 (2010). “It is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence.” *Smith v. State*, 138 Md. App. 709, 718 (2001) (citations omitted). It is the fact finder’s “task to resolve any conflicts in the evidence and assess the credibility of witnesses.” *Id.* “[P]ossession of recently stolen goods, absent a satisfactory explanation, permits the drawing of an inference ... that the possessor was the thief ... *or, where the theft was compounded, that the possessor was also the burglar ... or the robber.*” *Molter v. State*, 201 Md. App. 155, 169 (2011) (quoting *Brewer v. Mele*, 267 Md. 437, 449 (1972)) (emphasis in original).

As a preliminary matter, the State, noting that none of the trial exhibits were transmitted with the record, argues that this Court should not consider appellant’s claim “because the factual record before the Court is incomplete.” To be certain, there are several pieces of evidence that were not transmitted to this Court with the record that would have been helpful to review. Most importantly, appellant did not transmit the phone records and the GPS mapping report of FBI agent Matthew Wilde who testified as an expert in the

“field of cellular telephone record analysis, cell site analysis, and mapping.” These records indicate which cell phone towers, and their locations in relation to the crime scene, that appellant’s cell phone and co-defendant’s cell phone accessed on the morning of the burglary. While these records would have assisted in reviewing this matter, we nevertheless find sufficient evidence to affirm based on the weight of the evidence contained in the record transmitted.

Co-defendant Faison’s Dodge was tracked to the scene of the burglary at the time of the burglary. The vehicle was then tracked while it was rapidly leaving the crime scene and shortly thereafter located on North Hill Road, where appellant’s wife lived. Appellant was seen standing outside of the car with a group of men who were wearing dark colored clothing. A short time later, a BMW registered to appellant’s wife, and being driven by co-defendant Faison, was seen leaving North Hill Road. Appellant was seated in the front passenger seat, and co-defendant Dorkins was in the rear seat. Surveillance video from the pharmacy captured two people inside the building at the time of the burglary, and a third outside.² One of the individuals was captured on video carrying a yellow crowbar. The BMW was searched and gloves, including one containing rolled coins, a black knit cap or ski mask, and a prescription bottle were all found inside. A yellow crowbar, with markings matching the crowbar used in the robbery, was found outside of 945 North Hill Road. Perhaps most significantly, however, appellant was found in the BMW sitting atop of a

² The surveillance video, which was admitted below and played to the jury, was not transmitted to this Court. The record received by this Court, however, included the testimony of Detective John Walder, who testified regarding the contents of the video. From this testimony we are able to describe the evidence upon which the jury relied.

large stack of U.S. currency consisting mostly of ones and fives and rolled coins. Taken from the burglary was a large stack of U.S. currency consisting mostly of ones and fives and rolled coins. A rational trier of fact could have inferred from this evidence that appellant was involved in the planning and execution of the burglary with his two co-defendants. The evidence below was sufficient for a rational trier of fact to find appellant guilty of theft beyond a reasonable doubt.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**